

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 22, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 96-2580

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

TOMAS CONSUEGRA,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for LaCrosse County:
RAMONA A. GONZALEZ, Judge. *Affirmed.*

Before Dykman, P.J., Vergeront and Roggensack, JJ.

PER CURIAM. Tomas Consuegra appeals from an order denying relief, under § 974.06, STATS., from a criminal conviction. The court entered the judgment on Consuegra's guilty plea. In his motion for postconviction relief, Consuegra claimed that he did not knowingly and intelligently enter his plea because the trial court conducted the plea hearing in English, a language he

allegedly does not understand. The trial court found, however, that the record conclusively established Consuegra's ability to comprehend English. We affirm.

Consuegra immigrated to this country from Cuba in 1980. In 1990 the State charged him with two counts of delivering cocaine. He pled guilty in November 1990 and was sentenced in January 1991 to six-year concurrent probation terms, with a year in jail as a condition on one of the counts. All proceedings were conducted in English and Consuegra gave all his in-court responses and statements in English. Afterward, Consuegra chose not to pursue the postconviction remedies allowed as of right under § 974.02, STATS.

Consuegra was subsequently convicted on federal drug charges in 1993, and received an enhanced prison sentence due to his prior state conviction. He commenced this proceeding in 1996, evidently seeking removal of the state conviction from his record in order to escape the federal sentence enhancer.¹ The bases for relief are Consuegra's alleged inability to understand English and his trial counsel's alleged ineffectiveness for failing to alert the court to that fact.

The trial court correctly found that Consuegra understood English. At sentencing, when the court asked, "Is there anything you wish to say or state or bring to the attention of the court why sentence should not be pronounced?" Consuegra responded:

Yes, I would like to say what I did was wrong, I shouldn't have done it. Hector, when I fired him, he told me one way or another he would get me, but I never thought he would get me into anything like this. I will say once again, I

¹ The State chose not to revoke Consuegra's probation on the basis of the federal charges in view of the lengthy federal prison sentence Consuegra received. His two six-year terms of probation have now expired.

should not have done it, and I also know that Hector used a lot of drugs and I had known him for a long time and he told me that and I knew he was a heavy user and he needed some, and I gave him the favor as a long time friend, in finding some for him, but I didn't do it for profit—you know, I didn't put no money in my pocket. I did it for him as a friend. Once again, I did it, and I should not have done it, and I'm sorry.

Later, when warned by the court that “the other thing I want you to know is that if there are any other violations, then you come back before this court ... and you can pack your bags because you're going.” Consuegra responded, “There will be no other time.” At the plea hearing when asked, “How far have you gone in school?” He responded, “Well, I went to school for 11 years.” Consuegra was then asked, “Are you working at this time?” He answered, “Yes, I do maintenance for Steve Eide.” The court also read the entire information and asked, “How do you plead to that?” He stated, “I am going to plead guilty.” These are but examples of numerous questions and responses that unequivocally established Consuegra's understanding of English. No other inference is reasonably available from the record.

The trial court properly decided the motion without a hearing.

[I]f a motion to withdraw a guilty plea after judgment and sentence alleges facts which, if true, would entitle the defendant to relief, the trial court must hold an evidentiary hearing. However, if the defendant fails to allege sufficient facts in his motion to raise a question of fact, or presents only conclusory allegations, or if the record conclusively demonstrates that the defendant is not entitled to relief, the trial court may in the exercise of its legal discretion deny the motion without a hearing.

Nelson v. State, 54 Wis.2d 489, 497-98, 195 N.W.2d 629, 633 (1972). Here, Consuegra's motion presented only the conclusory allegation that he could not understand English. He presented no supporting evidence. Additionally, as noted,

the record of the plea hearing and sentencing conclusively establishes that Consuegra is not entitled to relief on his claim.

Our decision makes it unnecessary to determine whether Consuegra was ineligible for relief in any event, under § 974.06(4), STATS., as interpreted in *State v. Escalona-Narajo*, 185 Wis.2d 168, 517 N.W.2d 157 (1994).

By the Court.—Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5., STATS.

